

submits that if the Judge could not remember to put on his robes, how could he remember details about the intricacy of this case in order to make a just determination as to whether or not King's §2255 Motion warrants relief.

(d) During the trial proceedings it became very clear that Judge Wright's main concern was not to dispense justice, rather his main concern was to beat his own trial-time record. At trial the Judge said the following that supports this contention: "Well, let me tell you something – if we don't get this case tried in this two weeks, then you're going to have to come back afterwards, because I've got some stuff set and I'm – this is not my case. You all did not luck out. This is not my case, so we've got to get it done this – with the two weeks." (Tr.52). "Well, let's finish up with this witness. Come on, let's get going here. – All right. Let's show it. Let's show it." (Tr.432). "All right. If you've got some redirect. Let's make it short." (Tr.436). "Come on, let's move on." (Tr.795). "Let's get this done." (Tr.812). "And then let's wind this up. – Come on. You're already twenty minutes over." (Tr.828). Petitioner King had been told that considering the complexity of the case, the trial would last four weeks, not just five days, and the jury would probably deliberate for four or five days, not just one hour.

(e) Moreover, at the closing of the Government's evidence, defense counsel asked the judge for a few minutes to argue Rule 29. However, it became very clear that the Judge, from the beginning¹ of the trial, presumed that King was guilty. The Judge's response to the defense counsel's request to argue Rule 29 was the following: "Oh.

¹ "You can argue well, if Kingsley was so bad, why was the defendant and these other people even fooling around with him." (Tr. 32).

I'll let you argue it after I let the jury go - but I mean you're going to be wasting your time." (Tr.758-59).

(f) Furthermore, the Judge's conduct was unbecoming that of a Senior District Judge. It was unethical and unacceptable of such a high Justice Figure. Just one example, during trial, defense counsel apologized to the Judge who responded: "Now, damn it. We got this packet made up. Goddamn it." (Tr.132-3).

Petitioner King submits, that if this Writ of Mandamus is withheld, then the Honorable Judge, Scott O. Wright, will preside over King's §2255 Motion and will make an adverse ruling, because, the Judge now has taken this action as a personal matter since petitioner King has accused him of having mental instabilities and using profanities during trial.

Furthermore, Judge Wright's recusal is justified because several issues raised on King's §2255 Motion includes the above mentioned issues.

Petitioner King states the fact that he has tried to retain an attorney to present the above mentioned issues, however, they all have said, that it will be impossible to get other Judges to order Judge Wright's recusal, since they said that all the Judges are like fraternity and will stick together. Petitioner King would like not to believe that, and has proceeded *Pro Se*, with his case.

Petitioner King states the fact, that he had to spend over one million dollars on attorney's fees and could possibly have received a lesser sentence if he had perjured himself and pleaded guilty. However, his innocence overcomes all this, and he will continue to defend himself, because he is innocent.

Title 28 U.S.C. §455(a) provides that a Judge "Shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned." Unlike section 455(b), which specifies circumstances constituting actual conflict of interest, the purpose of section 455(a) is "to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible." *Liljeberg v. Health Service*, 486 U.S. 847, 108 S.Ct. 2194, 100 L.Ed.2d 855 (1988). Whether a Judge actually has a bias, or actually knows of grounds requiring recusal is irrelevant – section 455(a) sets an objective standard that does not require scienter. *Id.* at 859-60, 108 S.Ct. 2194.

Under §455(a), "disqualification is required if a reasonable person who knows the circumstances would question the Judge's impartiality, even though no actual bias or prejudice has been shown." *Gray v. University of Ark.*, 883 F.2d 1394, 1398 (8th Cir. 1989). Section 455(a) "was designed to promote public confidence in the integrity of the judicial process by replacing the subjective 'in his opinion' standard with an objective test." *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 858 n. 7, 108 S.Ct. 2194, 2202 n. 7, 100 L.Ed.2d 855 (1988). In determining, then, whether remand to a different District Judge is warranted to achieve the goal of ensuring "the appearance of impartiality," this Honorable Court should apply "an objective standard of reasonableness." *United States v. Poludniak*, 657 F.2d 948 (8th Cir. 1981), cert. denied, 455 U.S. 940, 102 S.Ct. 1431, 71 L.Ed.2d 650 (1982).

In the case at bar, it is the appearance of impartiality that matters, not actual bias. *United States v. Tucker*, 78 F.3d 1313, 1324 (8th Cir. 1996).

By enacting section 455(a), Congress sought to eradicate not only actual, but also the appearance of impropriety in the Federal Judiciary. *Id.* at 860. See also *Moran v. Clarke*, 296 F.3d 638 (8th Cir. 2002).

This Court has applied a three-factor test to determine whether a judicial action taken in violation of section 455(a) should be remedied by vacatur. This test requires a Court to consider: “[1] the risk of injustice to the parties in the particular case, [2] the risk that the denial of relief will produce injustice in other cases, and [3] the risk of undermining the public’s confidence in the judicial process.” *Id.*

When a Judge denied a motion to disqualify himself under title 28 U.S.C. §455(a), the moving party’s sole recourse is to apply to the Appeals Courts immediately for a Writ of Mandamus. *United States v. Balistreri*, 779 F.2d 1191 (7th Cir. 1985).

CONCLUSION

Wherefore, petitioner King respectfully moves this Honorable Court on the facts and for the reasons set forth herein, to grant this petition, so that petitioner King may receive justice. Justice done late is better than justice not done at all.

Respectfully submitted,

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P.O. Box 1000
Leavenworth, Kansas 66048

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No. 05-3319

In re: Robert Richard King, * Petition for
Petitioner. * Writ of Mandamus
* *

Petitioner's motion for reconsideration of this court's order of August 30, 2005, has been considered by the court and is denied.

September 21, 2005

Order Entered at the Direction of the Court:

Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit

**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No. 05-3319

In re: Robert Richard King, * Petition for
Petitioner. * Writ of Mandamus
*

JUDGMENT

Petition for writ of mandamus has been considered by the court and is denied. Mandate shall issue forthwith.

(5360-010199)

August 30, 2005

Order Entered at the Direction of the Court:

Michael E. Gans

Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

ROBERT RICHARD KING,)
)
Movant,) Case No.
)
vs.) 05-0545-CV-W-SOW-P
)
UNITED STATES) Crim. No.
OF AMERICA,) 01-00190-01-CR-W-SOW
)
Respondent.)

ORDER

This case involves a motion for relief pursuant to 28 U.S.C. § 2255. Having reviewed the record, it is ORDERED that movant's "Motion for Recusal of District Judge" (Doc. No. 4) is denied.

/s/ Scott O. Wright
SCOTT O. WRIGHT
UNITED STATES
DISTRICT JUDGE

Kansas City, Missouri,

Dated: 8/8/05
